

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 5-05CV0293-C
)	(Judge Sam R. Cummings)
v.)	
)	
CHEVRON PIPE LINE COMPANY,)	
)	
Defendant.)	
)	

**MOTION FOR LEAVE TO FILE UNITED STATES' REPLY TO CHEVRON'S
OPPOSITION TO THE UNITED STATES' MOTION FOR STAY OF PROCEEDINGS
PENDING SUPREME COURT DECISIONS IN RAPANOS AND CARABELL
AND REQUEST FOR EXPEDITED RULING**

The United States of America ("United States"), pursuant to the Requirements for District Judge Sam R. Cummings, II. Motion Practice, Paragraph B., files this Motion for Leave to File Reply Brief to Chevron's Opposition to the United States' Motion for Stay of Proceedings Pending Supreme Court Decisions in Rapanos and Carabell and Request for Expedited Ruling for the following reasons:

On March 9, 2006, the United States filed a Motion for Stay of Proceedings Pending United States Supreme Court Ruling in Rapanos and Carabell, and an accompanying Brief in Support of the Motion [Doc. No. 6] ("Motion for Stay").

On March 21, 2006, Chevron Pipe Line Company ("CPL") filed Chevron's Response in Opposition to the United States' Motion for Stay of Proceedings [Doc. No. 7] and Chevron's Brief in Opposition to the United States' Motion for Stay of Proceedings [Doc. No. 8]. CPL's response in opposition raises issues and arguments that will not be addressed adequately without the benefit of a reply.

In Dondi Properties Corp. v. Commerce Sav. and Loan Ass'n, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc), the District Court Judges of the Northern District of Texas said:

While our court has decided that the determination whether to permit a reply is discretionary with each judge, the principle is well-established that the party with the burden on a particular matter will normally be permitted to open and close the briefing. See, e.g., Sup. Ct. R. 35(3); Fed. R. App. P. 28(c). It should thus be rare that a party who opposes a motion will object to the movant's filing a reply.

121 F.R.D. at 291-92.

In Dondi, although the movant failed to obtain the District Court's permission to file a reply, the Court did not strike the movant's reply brief because the burden on the motion was on the movant "who should thus be given the opportunity to open and close the argument." Id. at 292.

In accordance with Dondi, I conferred with counsel for CPL regarding the United States desire to file a reply and CPL indicated it does not oppose the United States filing a reply, but stated it does oppose the United States' request for expedited consideration of the Motion for Stay.

The submission of a reply brief by the United States would assist this Court in resolving the issue of whether to issue a stay of the litigation in this case. The interests of justice and judicial economy will be served by allowing the United States the opportunity to reply to contentions raised in CPL's opposition, thereby insuring that the Court has a complete understanding of the issues relating to a stay of this litigation.

The United States also respectfully requests that the Court expedite consideration of its Motion for Stay. CPL has filed a Motion for Summary Judgment with accompanying Brief and Appendix [Doc. Nos. 9 and 10] and the United States' Opposition is due on April 10, 2006.

Therefore, the United States requests that this Court issue a decision on the Motion for Stay prior to April 10, 2006, when the United States' Opposition to CPL's Motion for Summary Judgment is due. Although the United States will oppose CPL's summary judgment motion, if the Court intends to grant the United States' Motion for Stay, nothing would be gained by having the parties brief summary judgment now.

For all of the foregoing reasons, the United States respectfully requests that this motion be granted and that the Court consider the United States' Reply to Chevron's Opposition to the United States' Motion for Stay of Proceedings Pending Supreme Court Decisions in Rapanos and Carabell, attached as Exhibit 1 to this motion.

Respectfully submitted,

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division

s/Scott Stewart
SCOTT STEWART
DC Bar No. 453383
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
PO Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-5508
Court Fax Number: (202) 353-7763
E-mail: scott.stewart@usdoj.gov

ATTORNEY FOR THE UNITED STATES

RICHARD B. ROPER
United States Attorney

E. SCOTT FROST
Assistant United States Attorney
United States Attorney's Office
Northern District of Texas
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
(806) 472-7351

Of Counsel

AMY SALINAS
Assistant Regional Counsel (6RC-S)
Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202
(214) 665-8063

CERTIFICATE OF CONFERENCE

Pursuant to Local Civil Rule LR 7.1(b), and in accordance with Dondi Properties Corp. v. Commerce Sav. and Loan Ass'n, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc), counsel for the United States has conferred in good faith with Jerry Ross, counsel for Chevron Pipe Line Company prior to filing this motion.

I understand that Chevron Pipe Line Company does not oppose the United States' Motion for Leave to File United States' Reply to Chevron's Opposition to the United States' Motion for Stay of Proceedings Pending Supreme Court Decisions in Rapanos and Carabell, however, Chevron Pipe Line Company opposes the United States' Request for Expedited Ruling on United States' Motion for Stay for reasons given in Chevron's Opposition to the United States' Motion for Stay of Proceedings.

s/ Scott Stewart
Scott Stewart
Trial Attorney
U.S. Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2006, I electronically filed the foregoing Motion for Leave to File United States' Reply to Chevron's Opposition to the United States' Motion for Stay of Proceedings Pending Supreme Court Decisions in Rapanos and Carabell and Request for Expedited Ruling with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing," constituting proper service, to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

Jerry W. Ross
Richard Hogan
PILLSBURY WINTHROP SHAW PITTMAN LLP
909 Fannin Street, Suite 2200
Houston, Texas 77010

s/ Scott Stewart
Scott Stewart
Trial Attorney
U.S. Department of Justice